convicted for culpable homicide not amounting to murder in contravention of section 304.

It has never been in question that the dead woman was stabbed in some sort of fight that took place on the night of 4th October last year in Klang Road, Kuala Lumpur. The only question really in issue at the trial was whether the hand which stabbed her was that of the appellant or someone else. Once that question was decided unfavourably to the appellant the question of whether what was done amounted to murder or culpable homicide not amounting to murder had, of course, to be considered, but at this stage we are not concerned with that issue.

The only direct evidence against the appellant was the unsworn evidence of a boy of eight years of age, a son of the deceased woman. The prosecution relied for corroboration of the boy's evidence on the evidence of two witnesses who saw the appellant near the scene at the material time.

The defence was one of *alibi*.

It is not necessary for this court at this stage to discuss the evidence in detail. It will suffice to observe, and this has never been seriously contested, that it was not very strong and in the circumstances it was particularly necessary that the jury should receive adequate directions regarding it. In particular it was necessary that they should receive a full and adequate direction on the subject of the corroboration which was, to put it at the lowest, desirable of the boy's evidence.

What the judge said on that point is this:—

"The general rule is that the unsworn evidence of a child must not be accepted unless it is corroborated on some material points by independent evidence."

Now that so far as it goes is correct. In our view, however, it does not go far enough and here I would quote a passage from the judgment of this court in the case of *Chao Chong & Ors.* v. *The Public Prosecutor*:—[1]

"One reason why children's evidence is regarded with suspicion is that there is always the danger that a child may not fully understand the effect of taking an oath. In this country where evidence is taken on affirmation that consideration loses much of its force. Another reason, however, which in this country possesses undiminished force is that it is a matter of common knowledge that children at times find it difficult to distinguish between reality and fantasy. They find it difficult after a lapse of time to distinguish between the results of observation and the results of imagination. In our view (we were speaking there in relation to the case before us) something of the sort should have been put to the jury. At the very lowest they should have been invited to consider their own experience in connection with stories told by children. It was not sufficient merely to observe that there is a risk in acting on the uncorroborated evidence of a child. In any event we have grave doubts as to whether even so far as it goes that observation is strong enough. As was said by Lord Goddard in the case of *Mohamed Sugal Esa* v. *The King*:—[2]

'It is a sound rule in practice not to act on the uncorroborated evidence of a child, whether sworn or unsworn, but this is a rule of prudence and not of law.'

Had the jury been directed as fully as we think they should have been on these points it is quite impossible to say with certainty that the appellants would have been convicted."

And we went on in that case to quash the convictions with which we were concerned.

In our view these observations are applicable to the present case. After all the rule as to corroboration is a living part of the law and it is not sufficient merely to state the bare rule to a jury. It must be stated and illuminated in such a way that it will be a vital factor in the consideration by them of the issues before them.

In the circumstances we have no option but to quash the conviction in the case.

Conviction quashed.

Solicitors: *Rajendra & Teik Ee.*

IN RE NEOH BEAN CHYE

[A.Cr.J. (Ong Hock Sim J.) August 27, 1965]

[Penang — Criminal Revision No. 5 of 1965]

Criminal law and procedure — Trial — Sentence — Juvenile offender — Desirability of calling for probation officer's report.

The accused had been convicted of robbery and was sentenced to five years imprisonment. The accused had two previous convictions, one in 1961 for possession of ganja and the other in 1964 for housebreaking by night. It appeared that the offence of possession of ganja for which the accused was committed for four years to the Henry Gurney School was committed by the accused when he was 17 years old and the ganja was worth $5.

Held: if the learned president in this case had been aware of the facts concerning the previous conviction in 1961 and also that in the case in 1964, nothing was stolen, he would not have taken such a serious view; therefore the sentence of five years imprisonment should be reduced to eighteen months imprisonment.

Cases referred to:—

(1) *Tukiran bin Taib* v. *Public Prosecutor* [1955] M.L.J. 24.

(2) *Teh Yew Whatt* v. *Public Prosecutor* [1958] M.L.J. 171.

CRIMINAL REVISION.

Wan Ismail bin Wan Mohamed Salleh (Deputy Public Prosecutor) for Public Prosecutor.

Accused in person.

Ong Hock Sim J.: Section 37 of the Courts of Judicature Act, 1964, requires a subordinate court passing sentence in exercise of the special powers of punishment conferred by subsection (2) of section 64 or by subsection (2) of section 87 (as the case may be) of the Courts Ordinance, 1948, where no appeal has been lodged against

such sentence, to transmit the record of such proceeding to the High Court so that the High Court may exercise the powers of revision conferred by section 31 of the Act, if it deems fit.

I have called for the record of this case however without waiting for the expiry of the period for giving notice of appeal and have given very serious consideration to the sentence of 5 years' imprisonment which was imposed by the learned president of the sessions court at Penang on the accused who had pleaded guilty to a charge of robbery under section 392 of the Penal Code together with 3 others still at large in the exercise of the powers conferred by section 64(2) of the Courts Ordinance, 1948. Subsection (2) of section 64 reads:—

"Notwithstanding the provisions of subsection (1), where a sessions court has convicted any person in the exercise of its jurisdiction under subsection (1) of section 63 and it appears that, by reason of any previous conviction or of his antecedents, a punishment in excess of that prescribed by subsection (1) of this section should be awarded, then such sessions court may award the full punishment authorised by law for the offence of which such person has been convicted and shall record its reason for so doing."

After the facts had been given, the plea of guilty was accepted and the accused convicted thereon.

It was disclosed to the court that the accused had a previous record, namely:—

(i) 1.1.61 (Penang) — Possession of ganja, section 6 of Dangerous Drugs Ordinance, 1952. Sent to Henry Gurney School until 21 years old.

(ii) 26.11.64 (Penang) — Housebreaking by night, section 456 of the Penal Code — 6 months' imprisonment.

The learned president considered that it was a proper case for invoking section 64(2) for the following reasons:—

(1) there have been too many robberies in Penang at the present moment;

(2) accused has had one previous conviction for an offence against property, i.e. 26th November, 1964, house-breaking by night, section 456 of the Penal Code;

(3) in commiting this offence with which he was convicted on the 21st August, 1965, the accused had been in the company of two armed persons.

I am mindful that the court does not interfere with the sentence passed in the court below unless such sentence was manifestly excessive or inadequate or illegal. I am not prepared to say that the two previous convictions of the accused would not justify the learned president's invoking his powers under section 64(2). I have however called for the record of his trial in 1961 for an offence of possession of $5 worth of Indian hemp or ganja. The accused was then 17 years plus and was a first offender. The probation officer's report was in no sense unfavourable. The accused was the youngest but one of his family. The parents left him with a paternal aunt since he was 10 years old and moved to Singapore with the rest of the family where they are all gainfully employed. The accused left school at an early age but according to the probation officer he had been economically independent, working as a "boy" in food-stalls and living with this aunt until her death in 1960. Another aunt refused to take him in and he had had to fend for himself. In early 1961 he was caught in possession of this ganja. I have noted previous decisions where the provisions of section 40 of the Juvenile Courts Ordinance, 1947, had been invoked in relation to persons over 17 years of age but under 21. In the cases of *Tukiran bin Taib* v. *Public Prosecutor* [1] and *Teh Yew Whatt* v. *Public Prosecutor* [2] it was emphasized that "it is always desirable before imposing a sentence of imprisonment on a person between the ages of 17 and 21 to consider the powers under section 40 of the Juvenile Courts Ordinance, 1947, and to call for a probation officer's report to establish the background of the person about to be sentenced". This should be done in every case where the court contemplates imposing a sentence of imprisonment. The court will therefore have regard to the nature of the offence and decide whether it is an appropriate case for exercising the powers under section 40 of the said Ordinance. Taking all the circumstances and the probation officer's report into consideration the order committing him to the Henry Gurney School at Telok Mas until he attained the age of 21 years seemed to me to err on the heavy side and failed to take into account that the offence was not one where there is no alternative but to impose a sentence of imprisonment. On the question therefore of the propriety of the sentence of 5 years' imprisonment in pursuance of the powers under section 64(2) of the Courts Ordinance I am of the opinion that had the learned president been aware of the facts concerning the previous conviction in 1961 and also that in the case in 1964, nothing was stolen, he would not have taken such a serious view. As the victims were not manhandled, I consider that a sentence of 18 months' imprisonment in view of his age and his previous unfortunate background adequate, and the sentence of 5 years' imprisonment is varied to one of 18 months' imprisonment.

Order accordingly.